

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVA TYREE O'NEAL,)
Petitioner,) 4:01cv3069
vs.) MEMORANDUM AND ORDER
MICHAEL KENNEY,)
Respondent.)

This matter is before the court on filing nos. 105 and 107, the Motion to Strike and Motion to Amend or Make Additional Findings filed by the petitioner, Keva Tyree O'Neal. This case is on appeal, and thus, the court lacks jurisdiction to amend the judgment or to revise orders on post-trial motions which would affect the judgment in this case. However, the court has granted a Certificate of Appealability, and the petitioner may wish to raise his arguments to the Eighth Circuit Court of Appeals. Therefore, filing nos. 105 and 107 are denied, without prejudice to the petitioner's ability to reassert his arguments on appeal, if allowed by the Eighth Circuit.

In addition, the petitioner has filed another Notice of Appeal (filing no. 109). However, the second Notice of Appeal does not appear to raise issues which are separate and distinct from those already at issue and presently pending before the Eighth Circuit by virtue of the petitioner's earlier Notice of Appeal. Therefore, the Clerk of Court is directed to forward all recent filings in this case to the Eighth Circuit which have not already been sent to the appellate court. If I am incorrect, and a new Notice of Appeal is indeed called for, I grant the petitioner leave to proceed IFP in this new appeal, and I do not see any new issues as to which a Certificate of Appealability should issue beyond those already identified in filing no. 102.

SO ORDERED.

December 4, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge